Filed 6/2/04 In re M. R. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re M.R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, **Plaintiff and Respondent,** **v.** **M.R.,** **Defendant and Appellant.**	**A104311** **(Solano County Super. Ct. No. J33873)**

M.R. appeals the orders declaring him a ward of the juvenile court and placing him on probation in the custody of his grandmother after the court sustained a petition (Welf. & Inst. Code, § 602) alleging he possessed cocaine and marijuana (Health & Saf. Code, §§ 11350, subd. (a), 11357, subd. (b)). He contends the court erred in denying his motion to suppress (Pen. Code,[1] § 1538.5).

BACKGROUND

The following facts are taken from the hearing on appellant's motion to suppress.

[1] The court's dispositional order placing appellant on probation was also based on the sustaining of a supplemental petition that alleged appellant unlawfully attempted to drive and take a car (Veh. Code, § 10851, subd. (a)), vandalized a car (Pen. Code, § 594, subd. (b)(1)), and possessed burglar's tools (Pen. Code, § 466). These offenses occurred two months after the drug possession offenses, and appellant does not challenge the order sustaining the supplemental petition.

Uniformed Police Officer Gerald Bautista was on patrol in the Crest area of Vallejo when, from a distance of less than ten feet, he saw appellant and two other minors standing on the corner of Mark and Sawyer Streets. This area is a known "high drug area," and Officer Bautista has personally observed drug-related incidents and made numerous arrests there for drug-related offenses. The minors were standing less than a foot apart in a circle facing each other. As Officer Bautista walked toward them, they began to walk slowly away from him, and he simultaneously noticed a bag of marijuana on the ground exactly where they had been standing; it would have been in the middle of their circle. He picked up the bag; when he did so the minors were approximately five feet away. In Bautista's experience, people carrying drugs often toss them "the minute they see us [the police] coming" because they think they cannot be arrested for possession if the drugs are not on their person.

Officer Bautista then arrested all three minors for possession of marijuana. None of them was able to produce identification. In Bautista's presence another officer conducted a search of appellant's person and found cocaine in his right front pocket.

At appellant's trial, Officer Bautista testified that after appellant's arrest and advisement of constitutional rights, appellant told Bautista the marijuana belonged to him and demonstrated how he took it from his waistband and threw it on the ground when he saw Bautista. He also told Bautista he did not want his friends to get in trouble for it.

Appellant sought to suppress the marijuana, cocaine, and his postarrest confession on the grounds Officer Bautista had merely detained the minors, not arrested them, and the scope of the search was greater than permitted for a detention "pat" search. He also argued that Bautista did not have probable cause to arrest him for possession of marijuana.

The court denied the motion. It impliedly found that Officer Bautista arrested appellant. It also concluded that, given the neighborhood and appellant's proximity to the bag of marijuana, Officer Bautista had probable cause to arrest.

DISCUSSION

Standard of Review

Under the well-established standard of review of motions to suppress, we defer to the trial court's express or implied factual findings when they are supported by substantial evidence. We then exercise our independent judgment to determine whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Appellant contends Officer Bautista lacked probable cause to arrest him for possession of marijuana because any of the three minors, or a fourth person, could have dropped the bag of marijuana, or it could have been on the ground before the minors arrived at the street corner.

A warrantless arrest for a misdemeanor committed in a police officer's presence does not violate the Fourth Amendment proscription against unreasonable searches and seizures if the arrest is supported by probable cause. (*Maryland v. Pringle* (2003) 124 S.Ct. 795,799 (*Pringle*).) "The probable-cause standard is incapable of precise definition . . . because it deals with probabilities and depends on the totality of the circumstances. [Citation.]." (*Id*. at p. 800.) The substance of all probable cause definitions is a reasonable ground for belief of guilt which must be particularized with respect to the person to be searched or seized. (*Ibid*.) To determine whether an officer had probable cause to arrest an individual, the court examines the events leading up to the arrest, and then decides "'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." (*Ibid*.)

We conclude Officer Bautista could reasonably infer that any or all of the three minors knew of and exercised some control over the bag of marijuana. They were closely huddled in a neighborhood known for drug-related incidents. The bag was in the center of the huddle which they disbanded as soon as they saw Bautista. Based on his experience, Bautista could infer a common enterprise among the three minors to share or exchange the marijuana, an enterprise, as *Pringle* noted, "unlikely to admit an innocent

person with the potential to furnish evidence against" any of them. (*Pringle*, *supra*, 124 S.Ct. at p. 801.)

Appellant argues that *Pringle* is factually distinguishable because it involved an automobile. In *Pringle*, the defendant and two other occupants of a car were arrested after the police, pursuant to a traffic stop, found cocaine and a large sum of rolled up cash in the car. (*Pringle*, *supra*, 124 S.Ct. at p. 800.) The defendant relied on *Ybarra v. Illinois* (1979) 444 U.S. 85 (*Ybarra*) to argue the police did not have probable cause to arrest him for possession for sale because they could not articulate facts showing him to be the person who possessed the cocaine.

In *Ybarra* the police obtained a warrant to search a tavern and its bartender for a controlled substance. (*Ybarra, supra*, 444 U.S. at p. 90.) In the course of conducting a patdown of all customers in the tavern, they found heroin in the defendant's pocket. (*Id*. at p. 91.) *Ybarra* concluded that the defendant's "mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person . . . a search or seizure of a person must be supported by probable cause particularized with respect to that person." (*Id*. at p. 91.)

Pringle distinguished *Ybarra*. It observed that defendant Pringle and his two companions were in a relatively small automobile, not a public tavern, and a car passenger, unlike a bar patron, will often be engaged in a common enterprise with the driver and have the same interest in concealing the fruits or evidence of their wrongdoing. Thus, the police could reasonably infer a common enterprise among all three occupants of the car. (*Pringle, supra*, 124 S.Ct. at p. 801.)

The fact that appellant was on a street corner, not in the confined space of a car, does not preclude probable cause under the circumstances witnessed by Officer Bautista. The configuration of the three minors when he first observed them and their mutual departure from the bag of marijuana when they noticed him establish probable cause of common dominion and control among them over the bag. He could therefore search appellant pursuant to a lawful arrest and seize the cocaine. (*Preston v. United States* (1964) 376 U.S. 364, 367-368.)

Further, appellant's position is not comparable to that of the *Ybarra* defendant, whom the police had no articulable bases to suspect was involved in the criminal activity that was the target of their search warrant. Unlike the accused tavern customer in *Ybarra*, appellant was not a stranger to the criminal activity Officer Bautista observed; he was a witnessed participant.

Because we conclude there was probable cause to arrest, we need not address whether the search was permissible as a detention search pursuant to *Terry* v. *Ohio* (1968) 392 U.S. 1, 21.

DISPOSITION

The orders are affirmed.

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Jones, P.J.

We concur:

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Stevens, J.

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Simons, J.